BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KEVIN MICHAEL FALLIS** **Greenwood Memorial Park** **David Keith Baumgardner, Cemetery Broker** **4300 Imperial Avenue** **San Diego, CA 92113** **Cemetery Salesperson License No. CES 40226** **Cemetery Salesperson License No. CES 44393** Respondent.	Case No. A1 2010 26

DECISION AND ORDER

The attached Stipulated Surrender of Licenses and Order is hereby adopted by the Director of Consumer Affairs and the Cemetery and Funeral Bureau as the Decision and Order in the above entitled matter.

This Decision shall become effective on November 30, 2011.

It is so ORDERED OCT 3 1 2011.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
ANTOINETTE B. CINCOTTA
Deputy Attorney General
State Bar No. 120482
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2095
Facsimile: (619) 645-2061
Attorneys for Complainant

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA

In the Matter of the Accusation Against: KEVIN MICHAEL FALLIS Greenwood Memorial Park David Keith Baumgardner, Cemetery Broker 4300 Imperial Avenue San Diego, CA 92113 Cemetery Salesperson License No. CES 40226 Cemetery Salesperson License No. CES 44393 Respondent.	Case No. A1 2010 26 **STIPULATED SURRENDER OF LICENSES AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Bev Augustine (Complainant) is the Bureau Chief of the Cemetery and Funeral Bureau. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Antoinette B. Cincotta, Deputy Attorney General.

2. Kevin Michael Fallis (Respondent) is represented in this proceeding by attorney Marc Geller, whose address is 1010 Second Avenue, Ste.1820, San Diego, CA 92101.

///

3. On or about February 28, 2008, the Cemetery and Funeral Bureau issued Cemetery Salesperson License No. CES 40226 to Kevin Michael Fallis (Respondent). The Cemetery Salesperson License was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. A1 2010 26, and will expire on June 30, 2012, unless renewed.

4. On or about June 29, 2011, the Cemetery and Funeral Bureau issued Cemetery Salesperson License No. CES 44393 to Kevin Michael Fallis (Respondent). The Cemetery Salesperson License will expire on June 30, 2012, unless renewed.

JURISDICTION

5. First Amended Accusation No. A1 2010 26 was filed before the Director of Consumer Affairs (Director), for the Cemetery and Funeral Bureau (Bureau), and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on June 1, 2010. Respondent timely filed his Notice of Defense contesting the First Amended Accusation. A copy of First Amended Accusation No. A1 2010 26 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. A1 2010 26. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of Licenses and Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in First Amended Accusation No. A1 2010 26, agrees that cause exists for discipline and hereby surrenders his Cemetery Salesperson License No. CES 40226, and his Cemetery Salesperson License No. 44393 for the Bureau's formal acceptance.

10. Respondent understands that by signing this stipulation he enables the Director to issue an order accepting the surrender of Respondent's Cemetery Salesperson Licenses without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Cemetery and Funeral Bureau may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of Licenses and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Surrender of Licenses and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of Licenses and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Cemetery Salesperson License No. CES 40226 and Cemetery Salesperson License No. CES 44393 issued to Respondent Kevin Michael Fallis are surrendered and accepted by the Director of Consumer Affairs.

15. The surrender of Respondent's Cemetery Salesperson Licenses and the acceptance of the surrendered licenses by the Bureau shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Bureau.

16. Respondent shall lose all rights and privileges as a cemetary salesperson in California as of the effective date of the Director's Decision and Order.

17. Respondent shall cause to be delivered to the Bureau his pocket licenses and, if one was issued, his wall certificates on or before the effective date of the Decision and Order.

18. If he ever applies for licensure or petitions for reinstatement in the State of California, the Bureau shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in First Amended Accusation No. A1 2010 26 shall be deemed to be true, correct and admitted by Respondent when the Director determines whether to grant or deny the application or petition.

19. If and when either of Respondent's licenses is reinstated, he shall pay to the Director costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of $3,315.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Director.

///

///

///

///

///

ACCEPTANCE

I have carefully read the above Stipulated Surrender of Licenses and Order and have fully discussed it with my attorney, Marc Geller. I understand the stipulation and the effect it will have on my Cemetery Salesperson Licenses. I enter into this Stipulated Surrender of Licenses and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 8/22/2011

KEVIN MICHAEL FALLIS
Respondent

I have read and fully discussed with Respondent Kevin Michael Fallis the terms and conditions and other matters contained in this Stipulated Surrender of Licenses and Order. I approve its form and content.

DATED: 8/22/11

MARC GELLER
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of Licenses and Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 10/10/2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

SD2010800398

Exhibit A

First Amended Accusation No. A1 2010 26

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
ANTOINETTE B. CINCOTTA
Deputy Attorney General
State Bar No. 120482
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2095
Facsimile: (619) 645-2061
Attorneys for Complainant

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA

In the Matter of the Accusation Against: KEVIN MICHAEL FALLIS Greenwood Memorial Park David Keith Baumgardner, Cemetery Broker 4300 Imperial Avenue San Diego, CA 92113 Cemetery Salesperson License No. CES 40226 Cemetery Salesperson License No. CES 44393 Respondent.	Case No. A1 2010 26 **FIRST AMENDED** **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Bev Augustine (Complainant) brings this First Amended Accusation solely in his official capacity as the Bureau Chief of the Cemetery and Funeral Bureau (Bureau), Department of Consumer Affairs.

2. On or about February 28, 2008, the Bureau issued Cemetery Salesperson License Number CES 40226 to Kevin Michael Fallis (Respondent). The Cemetery Salesperson License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

///

3. On or about June 29, 2011, the Bureau issued Cemetery Salesperson License Number CES 44393 to Kevin Michael Fallis (Respondent). The Cemetery Salesperson License will expire on June 30, 2012, unless renewed.

JURISDICTION

4. This First Amended Accusation is brought before the Director of Consumer Affairs (Director) for the Cemetery and Funeral Bureau, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 9725 states:

"Upon grounds provided in this article [Article 6 (commencing with section 9725)], and the other articles of this act, the license of any cemetery licensee and the certificate of authority of any cemetery corporation may be revoked or suspended in accordance with the provisions of this article."

6. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed.

STATUTORY AND REGULATORY AUTHORITIES

7. Section 9726 states:

"The bureau may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a cemetery licensee, and may temporarily suspend or permanently revoke a license at any time where the licensee, within the immediately preceding three years, while a cemetery licensee in performing or attempting to perform any of the acts specified in this act, has been guilty of any of the following:

"(a) Making any substantial misrepresentation.

"(b) Making any false statement of a character likely to influence or persuade.

". . . .

///

///

"(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

"The misrepresentations and false statements mentioned in this section include also misrepresentation and false statements as to other property than that which the cemetery licensee may be selling or attempting to sell."

COST RECOVERY

8. Section 125.3, subdivision (a), states, in pertinent part: "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . . upon request of the entity bringing the proceedings may request the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Substantial Misrepresentation, False Statements, and/or Fraudulent or Dishonest Conduct)

9. Respondent is subject to disciplinary action for unprofessional conduct under section 9726, subdivisions (a), (b) and (i) in that Respondent made substantial misrepresentations, false statement of a character likely to influence or persuade, and/or engaged in frauduent or dishonest conduct. The circumstances are as follows:

10. Between about June 2004 and July 2008, Respondent conspired with others to knowingly devise a scheme to defraud and to obtain money and property by means of false or fraudulent representations, and use the mails or private commercial interstate carrier in furtherance of the scheme to defraud others. In furtherance of the conspiracy, on or about June 29, 2004, Respondent caused the submission of a loan application to a financial institution for a property on Timberlane Way in Santee which falsely stated that the purported borrower earned $12,500 per month at a false employer. On or about July 2, 2004, Respondent caused his wife to sign a loan application that was submitted to a financial institution for a property on East Grape Street in San Diego which falsely stated that she earned $12,500 per month at a false employer.

On or about July 20, 2004, Respondent and a co-conspirator caused a loan application to be submitted to a financial institution for a property on Ruelle Court in Santee which bore the forged signature of the borrower and falsely stated that the borrower earned $6520 per month at a false employer. On or about August 19, 2004, Respondent and a co-conspirator caused a loan application to be submitted to a financial institution for a property on Boulder Lake Avenue in San Diego which falsely stated that the borrower earned $9,000 per month at a false employer, Grizzly Tickets. On or about September 10, 2004, Respondent notarized the forged signature of the alleged borrower on a loan application for a property on Dairy Mart Road in San Diego, without the alleged borrower being in his presence. On or about November 17, 2004, Respondent and a co-conspirator paid an account approximately $400 to create false letters verifying employment for borrowers. On or about July 29, 2005, Respondent falsely verified that the borrower on a loan application for property on Corte de las Piedras in El Cajon was employed by Innovative Financial Solutions as a fund manager since June 18, 2002.

11. On or about June 30, 2009, in the case captioned *United States of America v. Kevin Fallis*, (US District Court, Southern District of California, Case No. 09-CR-2293-L), Respondent was convicted based on his plea of guilty to the charge of conspiracy to commit mail fraud, wire fraud and bank fraud, in violation of Title 18, United States Code, 371, based on the facts set forth in the preceeding paragraph. Respondent is awaiting sentencing on his conviction.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Cemetery Salesperson License Number CES 40226 and License No. CES 44393 issued to Kevin Michael Fallis Kevin Michael Fallis;

2. Ordering Kevin Michael Fallis to pay the Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

///

///

3. Taking such other and further action as deemed necessary and proper.

DATED: 8/22/2011

BEV AUGUSTINE
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
Complainant

SD2010800398
80461953.doc

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
Cemetery and Funeral Bureau
1625 N Market Blvd., Ste S-208
Sacramento, CA 95834
P 916-574-7870 | F 916-928-7988 | web www.cfb.ca.gov

DECLARATION OF SERVICE BY MAIL

RE: Kevin Michael Fallis No. A1 2010 26

I, Ellis M. Kjer declare that I am over 18 years of age, and not a party to the within cause; my business address is 1625 North Market Blvd., Suite S-208, Sacramento, California, 95834. I served a true copy of the attached

Decision and Order
Stipulated Surrender of Licenses and Order
First Amended Accusation

on each of the following, by placing the same in an envelope (or envelopes) addressed (respectively) as follows:

First Class U.S. Mail & Certified U.S. Mail to:

Kevin Michael Fallis
3838 Bonita Rd.
Bonita, CA 91902

First Class Mail to:

Antoinette B. Cincotta, DAG
Office of the Attorney General
California Department of Justice
P.O. Box 85266
San Diego, CA 92186-2095

Cemetery and Funeral Bureau
Attn: Jeff Brown
1625 North Market Blvd., Suite S-208
Sacramento, California, 95834

Marc Geller, Esq.
1010 Second Avenue, Ste. 1820
San Diego, CA 92101

Each said envelope was then, on November 1, 2011, sealed and deposited in the United States mail at Sacramento, the county in which I am employed, with the postage thereon fully prepaid.

Executed on November 1, 2011, at Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct.

Ellis M. Kjer
Declarant